

the requirements expressly made applicable to CDBG activities by the Act itself.

(b) *Affirmatively furthering fair housing.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Conducting an analysis to identify impediments to fair housing choice within the State;

(2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis;

(3) Maintaining records reflecting the analysis and actions in this regard; and

(4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

(d) States shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

(e) *Architectural Barriers Act and the Americans with Disabilities Act.* The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally-funded buildings and other facilities to be designed, constructed, or altered in accordance with

standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996 and that meets the definition of *residential structure* as defined in 24 CFR 40.2, or the definition of *building* as defined in 41 CFR 101-19.602(a), is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in appendix A to 41 CFR part 101-19.6. For residential structures, these standards are available from the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Disability Rights Division, Room 5240, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2333 (voice) or (202) 708-1734 (TTY) (these are not toll-free numbers).

[57 FR 53397, Nov. 9, 1992, as amended at 59 FR 33894, June 30, 1994; 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 64 FR 50225, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50225, Sept. 15, 1999, § 570.487 was amended by revising paragraph (c), effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 570.487 Other applicable laws and related program requirements.

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(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with respect to CDBG assistance that fulfill the objectives and requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b) (LBPPPA)), which directs the Secretary to establish procedures to eliminate as far as practicable the hazards of lead poisoning due to the presence of lead-based paint in any existing housing assisted under a program administered by the Department. Such procedures shall apply to all such housing constructed or substantially rehabilitated prior to 1978, shall include appropriate measures to abate as far as practicable immediate lead-based paint hazards, and shall provide for assured notification to purchasers and tenants of such housing of the hazards of lead-based paint, of the symptoms and treatment of lead-based paint poisoning, and of

the importance and availability of maintenance and removal techniques for eliminating such hazards. The specific procedures are to be developed at the discretion of the state, provided they fulfill the objectives of and are not inconsistent with the LBPPPA. Furthermore, pursuant to section 401(b) of the LBPPPA, states shall establish procedures that prohibit the use of lead-based paint in residential structures rehabilitated or constructed with CDBG assistance. The requirements of this paragraph (c) shall take effect as soon as possible, but not later than twelve months after the publication of this rule and shall apply to covered housing assisted under this subpart.

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§ 570.488 Displacement, relocation, acquisition, and replacement of housing.

The requirements for States and state recipients with regard to the displacement, relocation, acquisition, and replacement of housing are in § 570.606 and 24 CFR part 42.

[61 FR 11477, Mar. 20, 1996]

§ 570.489 Program administrative requirements.

(a) *Administrative and planning costs—*

(1) *State administrative costs.* (i) The state is responsible for the administration of all CDBG funds. The state shall pay from its own resources all administrative costs incurred by the state in carrying out its responsibilities under this subpart, except that the state may use CDBG funds to pay such costs in an amount not to exceed \$100,000 plus 50 percent of such costs in excess of \$100,000. States are therefore required to match such costs in excess of \$100,000 on a dollar for dollar basis. The amount of CDBG funds used to pay such costs in excess of \$100,000 shall not exceed 2 percent of the aggregate of the state's annual grant, program income received by units of general local government (whether retained by the unit of general local government or paid to the State) and funds reallocated by HUD to the state.

(ii) For determining the amount of CDBG funds available in past years for administrative costs incurred by the state, the following schedule applies:

(A) \$100,000 per annual grant beginning with FY 1984 allocations;

(B) Two percent of program income returned by units of general local government to the State after August 21, 1985; and

(C) Two percent of program income received by units of general local government after February 11, 1991.

(iii) The state has the option of selecting its approach for demonstrating compliance with this requirement. Regardless of the approach selected by the state, the state will be required to pay its 50 percent of administrative costs in excess of \$100,000 in the same amount and at the same time at which it draws CDBG funds for such costs after the expenditure of the \$100,000. Any state for which it is determined that matching costs contributions are in arrears on the use of CDBG funds for administrative costs will be required to bring matching cost expenditures up to the level of CDBG expenditures for such costs within one year of the effective date of this subpart. A state grant may not be closed out if the state's matching cost contribution is not at least equal to the amount of CDBG funds in excess of \$100,000 expended for administration. Funds from any year's grant may be used to pay administrative costs associated with any other year's grant. The two approaches are:

(A) Cumulative accounting of administrative costs incurred by the state since its assumption of the Program. Under this approach, the state will identify, for each grant it has received, the CDBG funds eligible to be used for administrative costs as well as the maximum amount of matching funds which the state is required to pay. The amounts will then be aggregated for all grants received. The state must keep records demonstrating the actual amount of CDBG funds from each grant received which was used for administrative costs as well as matching amounts paid by the state. These amounts will also be aggregated for all grants received. The state will be considered to be in compliance with the requirement if the aggregate of actual amounts spent for administrative costs does not exceed the maximum amount allowable and the amount which the state has paid in matching funds is at least equal to the amount of CDBG

funds in excess of \$100,000 (for each applicable allocation) drawn for administrative purposes. Any administrative amounts associated with a particular state grant shall be deducted from the aggregate totals upon closeout of that state grant.

(B) An accounting process developed and implemented by the state which provides sufficient information to demonstrate that the requirements of this subsection are met.

(2) The state may not charge fees of any entity for processing or considering any application for CDBG fund, or for carrying out its responsibilities under this subpart.

(3) The state and its funded units of general local government shall not expend for planning, management and administrative costs more than 20 percent of the aggregate amount of the annual grant, plus program income and funds reallocated by HUD to the State which are distributed during the time the final Statement for the annual grant is in effect. Administrative costs are those described at § 570.489(a)(1) for states, and for units of general local government those described at sections 105(a)(12) and (a)(13) of the Act.

(b) *Reimbursement of pre-agreement costs.* The state may permit, in accordance with such procedures as the State may establish, a unit of local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this subpart and 24 CFR part 58.

(c) *Federal grant payments.* (1) *Payments.* The state shall be paid in advance in accordance with Treasury Circular 1075 (31 CFR part 205). The State shall use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the State to units of general local government. Units of general local government shall also use procedures to minimize the time elapsing between the transfer of funds by the State and disbursement for CDBG activities.

(2) *Interest on advances.* Interest earned by units of general local government on grant funds before disbursement of the funds for activities is not program income and must be returned to the Treasury, except that the unit of general local government may keep interest amounts of up to \$100 per year for administrative expenses. However, the state shall not be held accountable for interest earned on grants for which payments are made in accordance with paragraph (c)(1) of this section pending disbursement for CDBG activities.

(d) *Fiscal controls and accounting procedures.* (1) A state shall have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must be available for Federal inspection and must:

(i) Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and

(iii) Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of state and local governments.

(2) A state may satisfy this requirement by:

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(e) *Program income.* (1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect